

Marion Scrymgour MLA

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Committee Secretary
Senate Committee on Environment, Communications and the Arts
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Secretary,

SUBMISSION BY MARION SCRYMGOUR MLA TO THE SENATE STANDING COMMITTEE ON ENVIRONMENT, COMMUNICATIONS AND THE ARTS – INQUIRY INTO FORESTRY AND MINING OPERATIONS ON THE TIWI ISLANDS

Enclosed is the written submission (plus attachments) that I foreshadowed in May. Could you please send acknowledgement of receipt (by post or e-mail) as soon as possible, and could you also please advise as to the process and time frame for this submission's consideration by the Committee.

Thanks in anticipation,

Marion Scrymgour MLA
INDEPENDENT MEMBER FOR ARAFURA

AN INDEPENDENT VOICE FOR ARAFURA

Electorate Office at Shop 7 & 8 Moil Shopping Centre, MOIL, Darwin

**SUBMISSION BY MARION SCRYMGOUR MLA TO THE SENATE
STANDING COMMITTEE ON ENVIRONMENT, COMMUNICATIONS AND
THE ARTS: INQUIRY INTO FORESTRY AND MINING OPERATIONS ON
THE TIWI ISLANDS**

The terms of reference for this Senate Inquiry cover a number of discrete but related matters. The principal purpose of this submission is to address issues relating to the governance of the Tiwi Land Council, in particular as regards representation of women. That is an issue which falls within terms of reference (b) and (f), which are in the following terms:

- (b) a review of governance arrangements relating to existing forestry and mining operations on the Tiwi Islands, including the examination of consent and approval processes to date***

- (f) any related matters***

In my oral presentation to the Senate Committee in May I have already commented on matters that are relevant to the other terms of reference of the Inquiry and I will not expand on those comments other than to make the following further comments in relation to terms of reference (a) and (c).

Term of reference (a) is worded as follows:

- (a) an assessment of the environmental, economic and community impacts of existing and proposed forestry and mining operations on the Tiwi Islands including compliance with the relevant environmental approvals and conditions.***

It is of considerable disappointment and surprise to me that the Northern Territory Government has failed to make a substantive submission or contribution to this Inquiry, in particular in relation to this term of reference.

As the Northern Territory Minister Environment Minister at the time, I am fully aware that the Northern Territory Government conducted an audit report in relation to the environmental breaches committed by Great Southern. That report was submitted to my then Commonwealth counterpart, Malcolm Turnbull and I discussed its important and worrying contents with him. After the November 2007 federal election I also discussed the report with the current Commonwealth Environment Minister, Peter Garrett.

Not only should this Senate Committee be provided with a copy of the audit report, it should also be hearing or receiving evidence from relevant Northern Territory Government environmental monitoring staff who were involved in its preparation. On the same day in May that I made my oral presentation to the Senate Committee in Darwin I noticed that there was in fact a representative of the Northern Territory Government agency responsible for environmental monitoring present and available to give such evidence, but it appears that she was instructed to play no active part in the Inquiry.

The wording of term of reference (c) is:

(c) in respect to forestry operations, an examination of the adequacy of contractual, commercial and legal arrangements between project proponents and operators and the Tiwi Land Council

As regards this term of reference, it is submitted that the spectacular and in retrospect probably inevitable collapse of the Great Southern house of cards reflects grossly inadequate due diligence on the part of the Tiwi Land Council, in particular its senior management staff and its consultant expert advisers. The Committee is urged to read carefully the 22/5/09 article in the Northern Territory News by Terry McRann, attachment 1 to this Submission. The Committee is also urged to note with concern that as at 12/6/09 the administrator for Great Southern confirmed that payment of both the \$2 million environmental breach penalty to the Commonwealth and the associated \$1.35 over three years to the Tiwi Land Council is now very much in doubt.

As regards terms of reference (b) and (f), the conclusion which I ask the Committee to draw is that the Tiwi Land Council governance structures and practices currently in place are (and have for the last 30 years always been) grossly discriminatory towards women.

The scheme of the *Aboriginal Land Rights (Northern Territory) Act* ("ALRA") is that land granted pursuant to the Act is held by statutory land trusts established by the relevant Australian Government Minister. The beneficiaries of each land trust comprise the traditional owner group or groups for the land within the land trust area together with other Aboriginal people who have a subsidiary traditional interest in part or all of that land. These two classes of beneficiaries are not equal: only a traditional owner group has the right to consent to land use proposals in respect of its land. Other beneficiaries only have a right to be consulted. The individuals comprising a land trust have no substantive function other than signing documents at the direction of the relevant land council. It is the land council which performs the function of statutory trustee. The most important statutory trustee functions are the identification of the members of a traditional owner group and the ascertaining of a traditional owner groups wishes with respect to a land use proposal. In circumstances where a traditional owner group consents to and positively supports a particular land use proposal for its land, the land council as statutory trustee has only a very limited statutory discretion to reject the proposal (by reference to whether the terms and conditions are "reasonable"). However that function is a completely different function from that played by the members of a traditional owner group when deciding amongst themselves whether to consent to a particular land use proposal.

The ALRA definition of "traditional Aboriginal owners" is as follows:

traditional Aboriginal owners, in relation to land, means a local descent group of Aboriginals who:

- (a) have common spiritual affiliations to a site on the land, being affiliations that place the group under a primary spiritual responsibility for that site and for the land; and***
- (b) are entitled by Aboriginal tradition to forage as of right over that land***

There is nothing in the that definition which excludes women, and all Tiwi people would reject any suggestion that women are not included in the discrete local descent groups which are the traditional Aboriginal owners of the various traditional Tiwi countries or estates.

There is only one land trust for the Tiwi Islands, namely the "Tiwi Aboriginal Land Trust".

The appointment or recruitment of members of a land council is governed by subsection 29(1) of ALRA which is in the following terms:

The members of a Land Council shall be Aboriginals living in the area of the Land Council, or whose names are set out in the register maintained by the Land Council in accordance with section 24, chosen by Aboriginals living in the area of the Land Council in accordance with such method or methods of choice, and holding office on such terms and conditions, as is, or are, approved by the Minister from time to time.

There is nothing in the wording of subsection 29(1) which precludes the appointment or recruitment of women to a land council.

Inadequate representation of women on Northern Territory land councils is a matter which has generated concern in the past and which was the subject of comment by Justice Toohey in his December 1983 report on ALRA to the Minister for Aboriginal Affairs (*Seven Years On*). A copy of pages 49 -51 of his report setting out the paragraphs that appear under the heading "Representation of Women on Land Councils" is attachment 2 to this Submission. Since December 1983 the number of women members on the two mainland land councils has significantly increased. By contrast, to my knowledge there has only ever been one female member of the Tiwi Land Council. I had the opportunity to observe the interaction between her and other Tiwi Land Council members (and staff). I do not believe that she was accorded sufficient respect or given appropriate support in discharging that role and she withdrew after a comparatively short period.

In his August 1998 review ALRA (*Building On Land Rights For The Next Generation*) John Reeves QC (now Justice Reeves of the Federal Court) had this to say about representation of women on Land Councils (at page 99):

Women are poorly represented on each of the Land Councils. The NLC has eight elected and five co-opted women members. The CLC has eight women members. Neither the TLC, nor the ALC, has any women members. Somewhat paradoxically, the two small Land Councils have the worst record in this regard. The paradox arises from the view expressed by Justice Toohey, in relation to the decentralisation of the large Land Councils, that: 'It may be expected that the closer decision-making is to the community affected, the more likely women will be represented in that process'. On many occasions in the course of this Review, during the meetings held on Aboriginal communities, women arranged to speak to me separately from the men. During these discussions they raised important local community and social

issues that had not been raised by the men. It is possible that these issues are not being sufficiently addressed at present in the male-dominated Land Councils.

The membership of the Tiwi Land Council is tied to membership of a Tiwi land-owning group in the manner explained in the following extract from the “About Us/Structure” section of the Tiwi Land Council website:

Composition of the Land Trust and the Land Council was determined at a meeting of the Land Council held 7 February 1979. Selection procedures for members was initially based upon 12 clan or “country” groups who comprise the Tiwi people.

Consolidation of these 12 groups, to 7 occurred in 1981 with traditional owners agreeing to collective representation. During 1992 the Land Council made application to the Minister for the inclusion of an additional group within the Land Council membership. On 26 May 1992 approval was given to form the eighth group of the Land Council. This political process of expansion and amalgamation of land based units is a Tiwi tradition documented over 100 years.

On 6 October 1981 the Minister for Aboriginal Affairs approved the Clan Leaders of each group to be a member of the Land Trust. These leaders would themselves appoint (4) other members of their group who together with themselves comprise the membership of the Land Council.

On 16 November 1987 the Minister approved a total of 6 persons from each group, including the Land Trustee, to comprise the membership structure of the Land Council. With 8 groups represented at 30 June 1995, the total membership of the Tiwi Land Council is 32.

There is nothing in the structural arrangement explained in the above extract from the Tiwi Land Council website which precludes the membership of women. However, I have been aware for some years now that at least some of the senior Land Council men express the view that decision-making about Tiwi land is “men’s business” and that therefore women should not serve on the Tiwi Land Council. That view is fundamentally flawed on two counts.

Firstly, I have long been told by my female Tiwi elders that women have always played a fundamental and compulsory role in traditional decision-making about Tiwi land. That view is strongly supported by the many references to women as joint participants in land-related debate and decision-making by Professor Jane Goodale (deceased as of November 2008) in pages 130-134 of *The Tiwi of North Australia (Third Edition)*. Copies of those pages are attachment 3 to this Submission.

Secondly, even if traditional decision-making about land was men’s only business, that should have no bearing on whether women should serve on the Tiwi Land Council because it is clear from the Act that the statutory role of land council members is not “traditional” decision-making but rather informed and contemporary decision making in the nature of a trustee exercising protective and precautionary

The Committee is requested to forward a copy of this Submission to the Minister as a matter of urgency.

Marion Scrymgour MLA
INDEPENDENT MEMBER FOR ARAFURA

15/6/09

Attachments to this submission are not available online.